

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David G. Sawyer Art Unit : 2175
Serial No. : 10/820,528 Examiner : Andrew Tank
Filed : April 7, 2004 Conf. No. : 8330
Title : GRAPHICAL USER INTERFACE BUTTONS AND TOOLBARS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Applicant hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Notice of Allowance mailed May 15, 2009, which includes a Determination of Patent Term Adjustment under 35 U.S.C. 154 (b), indicates the current PTA calculation for the above-referenced application is 612 days. Reconsideration of the PTA calculation to increase total PTA from 612 to 634 days is respectfully requested.

REMARKS

“A Delays” are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. To the extent that the periods of delay overlap, the period of any term adjustment shall not exceed the actual number of days the issuance of the patent was delayed. 35 U.S.C. § 154(b)(2)(A).

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

“A Delay”

A first PTO action was due on or before June 7, 2005 (the date that is fourteen months after April 7, 2004, the date on which the application was filed). The PTO mailed the first non-final Office Action on April 4, 2007, thereby according a PTO Delay of 666 days. Applicant does not dispute the PTO's calculation for this "A Delay" from June 8, 2005 (the day

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: July 24, 2009.

after the date that is fourteen months after the date on which the application was filed), to April 4, 2007. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of "A Delay" detailed above, the total "A Delay" for this patent application should be calculated as 666 days.

"B Delay"

It is understood that "B Delay" is not calculated at the time of allowance, and thus any issues relating to the PTA calculation for application pendency of longer than three years pursuant to 37 C.F.R. §§ 1.702(b) and 1.703(b) will be addressed once an actual issue date has been established.

Applicant Delay

A reply to an Office Action was due on or before July 4, 2007 (the date that is three months after April 4, 2007, the date on which the Office Action was mailed). Applicant filed a response to the Office Action on July 5, 2007, thereby according an Applicant Delay of 1 day. Applicant does not dispute the PTO's calculation for this Applicant Delay for July 5, 2007 (the day after the date that is three months after the date on which the Office Action was mailed). See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before January 11, 2008 (the date that is three months after October 11, 2007, the date on which the Office Action was mailed). Applicant filed a response to the Office Action on February 11, 2008, thereby according an Applicant Delay of 31 days. Applicant does not dispute the PTO's calculation for this Applicant Delay from January 12, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to February 11, 2008. See 37 C.F.R. § 1.704(b).

The Office mailed a Non-Final Office Action on June 3, 2008 (after initially mailing an incomplete Non-Final Office Action mailed on May 8, 2008), in which the examiner explicitly states, "the previous Non-Final Action of May 08, 2008 is hereby vacated and replaced by the attached Non-Final Action . . . Accordingly, the Period of Reply has been restarted to begin from the mailing of this communication." Applicant filed a reply on September 3, 2008, and, as such, should have been assessed no Applicant Delay; thus, Applicant respectfully submits that the

calculated Applicant Delay of 22 days contains an error and that the correct calculation associated with this action is 0 days. See 37 C.F.R. § 1.704(b).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent application should be calculated as 32 days (i.e., the sum of 1 day and 31 days).

Terminal Disclaimer

This patent application is not subject to a terminal disclaimer.

Conclusion

In consideration of the events described above, Applicant believes the PTA calculation of 612 days is incorrect. As such, Applicant respectfully requests reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 666 days;
- 2) Total Applicant Delay should be calculated as 32 days (i.e., the sum of 1 day and 31 days); and
- 3) Total PTA should be calculated as 634 days.

The fee of \$200 required under 37 C.F.R. § 1.18(e) is being submitted herewith. Please apply any other required charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 07844-0648001.

Respectfully submitted,

Date: July 24, 2009

/Elspeth S. White/
Elspeth S. White
Reg. No. 62,133

Fish & Richardson P.C.
PTO Customer No. 21876
Telephone: (650) 839-5070
Facsimile: (877) 769-7945